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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 02.05. 2016

+ MAC.APP. 217/2014 and CM No.4695/2014

RAJASTHAN STATE ROAD TRANSPORT

CORPORATION

..... Appellant

Through: Ms. Tejaswita, Advocate

versus

LAXMI & ORS

..... Respondents

Through: Mr. Mohinder Malhotra, Adv. for R-1 &
2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT

R.K.GAUBA, J (ORAL):

1. Data Ram, then aged 26 years, suffered injuries in a motor vehicular accident that occurred on 12.05.2011 involving two motor vehicles, one being three wheeler scooter (goods carriage) bearing registration no.DL-1LN-5062 (TSR) driven by him and, the other, a bus bearing registration no.RJ-13-PA 2894 (offending vehicle), admittedly of Rajasthan State Road Transport Corporation (RSRTC) which is the appellant before this court, it

having been driven at the relevant point of time by its employee Rameshwar (fifth respondent herein). As a result of the collision, Data Ram died, giving rise to the cause of action for the accident claim case (case no.448/2011) having been preferred by his wife, minor child and parents (first to fourth respondents herein / claimants) under Sections 166 and 140 of the Motor Vehicles Act, 1988 (M.V. Act) in the wake of the detailed accident report (DAR) submitted on 07.06.2011 by the local police, on the basis of evidence gathered during investigation in the corresponding first information report (FIR) no.102/2011 of Police Station Punjabi Bagh.

2. The tribunal held inquiry and, by judgment dated 05.12.2013, held that the accident had been caused due to negligent driving of the bus driven by the fifth respondent (driver). It assessed the compensation in the sum of ₹16,31,278/- with interest directing RSRTC to pay to the claimants, the said amount which includes ₹13,96,278/- calculated towards loss of dependency on the basis of notional income of ₹9126/- from which 1/4th was deducted towards personal and living expenses, to work out the amount of loss of dependency on the multiplier of 17.

3. RSRTC, by this appeal, challenges the impugned judgment and award on two counts. Its first contention is that the negligence on the part of the bus driver has not been proved in as much as it was admitted by Dharmender Singh (PW-5), an eye witness, who was also travelling in the TSR with the deceased that the bus could be seen from a distance of 15 meters. From this, in the submission of the appellant, it needs to be inferred that the accident could have been avoided by the TSR driver in as much as it was further admitted by the witness that on account of another accident that

had already occurred, the traffic had been diverted and the bus had been asked by the traffic police to move into the wrong lane. The counsel also relies upon the evidence of bus driver (RW-1) to the effect that the bus was stationery at the relevant point of time and that the TSR had come up to strike against it.

4. The appellant also questions the computation of compensation on account of loss of dependency on the ground that Rambabu (PW-3) father of the deceased during his cross-examination had conceded that he was earning his livelihood by plying rickshaw there after and so he and his wife (mother of the deceased) could not have been included amongst the dependants.

5. Having heard both sides at length and having gone through the tribunal's record, this court finds no substance in either of the two contentions.

6. It is only the word of RW-1 that the bus was stationery and that it was the TSR which had come up to strike against it. The evidence of PW-5 clearly shows that both vehicles were moving at the relevant point of time. This is borne out from the extent of damage suffered by the two vehicles as well. It is the admitted case of RW-1 that his bus had been moving in the wrong lane, i.e. against the flow of traffic meant for that part of the carriage-way of the road. There may be some justification for the bus to have moved into a wrong lane after another accident had occurred and the traffic police regulating the movement of the traffic at the particular place had diverted the traffic. But the fact that the bus was in the wrong lane obliged its driver to be even more careful. The TSR driver may have seen the bus from a distance of 15 metres but the fact that the two vehicles collided against each

other with great force shows that the bus would have reached the place of collision in split seconds. Therefore, the finding returned by the tribunal on the subject of negligence does not call for any interference.

7. The father of the deceased may be earning a paltry sum of ₹1500/- per month as a rickshaw pullar. But, this cannot be said to make him wholly self-reliant. His son (deceased) seems to have been engaged in a better employment in that he was driving a goods carriage vehicle. Therefore, the case of the claimants about dependency of the parents as well cannot be grudged.

8. In above view, the appeal is unmerited and therefore, dismissed.

9. By order dated 12.03.2014, the appellant (RSRTC) had been directed to deposit the entire awarded amount with upto date interest within a period of six weeks, whereupon the Registrar General was directed to release 70% of the said amount to the claimants, keeping the rest in a fixed deposit receipt for a period of one year with provision for auto renewal. The Registrar General shall now release the balance sum to the claimants in terms of the impugned judgment.

10. Statutory amount, if deposited, shall be refunded.

11. The appeal and the pending application are dismissed.

R.K. GAUBA
(JUDGE)

MAY 02, 2016
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